IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGEMENT NO.345 OF 2004
IN
SUMMARY SUIT NO.628 OF 2004

Nimesh Keshavchandra Shah — Plaintiff

versus

M/s.Mangalya Trading and Investment Ltd. — Defendant

Mr.N.C.Parekh i/by M.Hiralal & Co. for plaintiff.
Mr.Bhavesh Parmar for defendant.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 8th June 2005

PC :

1. This is a summary suit instituted by an employee against company which appointed him as Senior Vice President (Finance) vide appointment letter dated 7th November 1997. The terms and conditions stipulated in the appointment letter contemplated payment of salary of perquisites including use of car and credit card facility. It is the case of the plaintiff that he resigned from services and at the time of tendering said resignation he also handed over the vehicle and the credit card. He also received his salary certificate which is placed on record. This is a

form prescribed under Indian Income Tax Act, 1961 (Form No.16 pertaining to TDS). Mr.Shah for plaintiff relies upon note no.2 appended to this form which has been forwarded by the company wherein salary dues is mentioned as Rs.1,51,476/-. This amount constitutes salary as well as terminal dues. It is the case of the plaintiff that this amount has not been forwarded and despite repeated requests the plaintiff is not being paid his legitimate dues.

2. An affidavit is filed by the Director of Company in which several defences have been raised including maintainability of suit as a summary suit. However, there is neither any reference nor any denial of the certificate referred to above. On the other hand, the grievance appears to be that some documents pertaining to the vehicle have not been handed over. In my view, this could hardly be a defence for non payment of salary and terminal dues. That is an admitted claim.

3. The issue of maintainability of the present suit as a summary suit on account of it not based on any written contract, would not disentitle the plaintiff from having admitted dues deposited in

this Court. In fact interest of justice would be served if the defendant company is given an opportunity to substantiate the pleas as raised in the reply on the condition that it deposits a sum of Rs.1,51,746/- in this Court within a period of 16 weeks from today. On deposit of the said amount within the time stipulated the suit shall stands transferred to list of Commercial Causes with usual directions to file written statement, discovery and inspection. Needless to state that in case of non deposit further consequences in law would follow. Summons for judgement stands disposed off. Liberty to plaintiff to apply for withdrawal of the amount after the same is deposited. That issue will be considered at an appropriate stage independently.

(S.C.DHARMADHIKARI, J.)